

AMENDED IN ASSEMBLY MAY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1691

Introduced by Assembly Member Jones-Sawyer

February 13, 2014

An act to add *and repeal* Section 320.6 to of the Penal Code, relating to gaming.

LEGISLATIVE COUNSEL'S DIGEST

AB 1691, as amended, Jones-Sawyer. Charitable raffles.

The California Constitution authorizes the Legislature to permit private, nonprofit, eligible organizations to conduct raffles as a funding mechanism to support beneficial and charitable works, if, among other conditions, at least 90% of the gross receipts from the raffle go directly to beneficial or charitable purposes in California. The California Constitution further authorizes the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a $\frac{2}{3}$ vote of each house of the Legislature. Existing statutory law implements those provisions and requires the Department of Justice to administer and enforce those provisions.

This bill would authorize a raffle conducted by an eligible organization, as defined, for the purpose of directly supporting specified beneficial or charitable purposes in California, or financially supporting another private, nonprofit, eligible organization, as defined, that performs those purposes if, among other requirements, each ticket sold contains a unique and matching identifier, 50% of the ~~net~~ gross receipts generated from the sale of raffle tickets are used to benefit or provide support for beneficial or charitable purposes, as defined, ~~and~~ the other

50% is paid to the ~~winner~~ winner; and the winners of the prizes are determined by a manual draw, as specified. The bill would authorize a random number generator ~~an electronic device~~ to be used to select the winning ticket. ~~sell tickets.~~ This bill would define an eligible organization as a private, nonprofit organization established by, or affiliated with, a team from specified sports organizations that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to specified provisions of federal and California law.

The bill would require, if an eligible organization conducts a raffle for purposes of financially supporting another private, nonprofit, eligible organization, the eligible organization conducting the raffle to distribute to the other eligible organization all proceeds not paid out to the winners within 15 days of conducting the raffle. The bill would require an eligible organization to disclose to all ticket purchasers the designated private, nonprofit organization for which the raffle is being conducted.

This bill would also prohibit an eligible organization from conducting a raffle without first having obtained and thereafter maintained a registration from the Department of Justice, as specified. This bill would authorize the department to issue regulations to enforce these provisions, to assess an annual registration fee of \$10 to be deposited in the General Fund to cover the actual costs of establishing and operating this registration system, and would require the department to maintain a database of registrants, with specified exemptions, and conduct specified proceedings in compliance with the Administrative Procedure Act. *The bill would require, prior to March 31, 2017, the Department of Justice to conduct a study, and report that study to the Assembly Committee on Governmental Organization, that includes, among other things, whether and how the money raised from raffles conducted pursuant the bill's provisions has impacted charitable giving by the eligible organizations. The bill would repeal its provisions on December 31, 2017.*

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 320.6 is added to the Penal Code, to read:
- 2 320.6. (a) Notwithstanding Section 320.5, this section shall
- 3 apply to an eligible organization, as defined in subdivision (c).

(b) A raffle conducted by an eligible ~~organization~~ *organization*, as defined in subdivision ~~(e)~~ *(c)*, for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit eligible organization, as defined in subdivision (c) of Section ~~320.5~~ *320.5*, that performs beneficial or charitable purposes may be conducted in accordance with this section.

(c) For purposes of this section, “eligible organization” means a private, nonprofit organization established by, or affiliated with, a team from the Major League Baseball, National Hockey League, National Basketball Association, National Football League, Women’s National Basketball Association, Professional Golfers Association, Ladies Professional Golfers Association, National Association for Stock Car Auto Racing, or Major League Soccer that has been qualified to conduct business in California for at least one year prior to conducting a raffle, is qualified for an exemption under Section 501(3)(c) of the Internal Revenue Code, and is exempt from taxation pursuant to Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code.

(d) For purposes of this section, “raffle” means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, in which all of the following are true:

(1) Each ticket sold contains a unique and matching identifier.

(2) (A) Winners of the prizes are determined by *a manual* draw from tickets described in paragraph (1) that have been sold for entry in the *manual* draw. ~~A random number generator may be used to select the winning ticket. The prize paid to the winner is comprised of one-half or 50 percent of the net receipts generated from the sale of raffle tickets for a raffle.~~

(B) *An electronic device may be used to sell tickets.*

(C) *The prize paid to the winner is comprised of one-half or 50 percent of the gross receipts generated from the sale of raffle tickets for a raffle.*

(3) The *manual* draw is conducted in California under the supervision of a natural person who is 18 years of age or older.

(4) (A) Fifty percent of the ~~net gross~~ receipts generated from the sale of raffle tickets for any given *manual* draw are used by the eligible organization conducting the raffle to benefit or provide

1 support for beneficial or charitable purposes, or used to benefit
2 another private, nonprofit organization, provided that an
3 organization receiving these funds is itself an eligible organization
4 as defined in subdivision (c) of Section 320.5. As used in this
5 section, “beneficial purposes” excludes purposes that are intended
6 to benefit officers, directors, or members, as defined by Section
7 5056 of the Corporations Code, of the eligible organization. Funds
8 raised by raffles conducted pursuant to this section shall not be
9 used to fund any beneficial, charitable, or other purpose outside
10 of California. This section does not preclude an eligible
11 organization from using funds from sources other than the sale of
12 raffle tickets to pay for the administration or other costs of
13 conducting a raffle.

14 (B) An employee of an eligible organization who is a direct
15 seller of raffle tickets shall not be treated as an employee for
16 purposes of workers’ compensation under Section 3351 of the
17 Labor Code if the following conditions are satisfied:

18 (i) Substantially all of the remuneration, whether or not paid in
19 cash, for the performance of the service of selling raffle tickets is
20 directly related to sales rather than to the number of hours worked.

21 (ii) The services performed by the person are performed pursuant
22 to a written contract between the seller and the eligible organization
23 and the contract provides that the person will not be treated as an
24 employee with respect to the selling of raffle tickets for workers’
25 compensation purposes.

26 (C) For purposes of this section, an employee selling raffle
27 tickets shall be deemed to be a direct seller as described in Section
28 650 of the Unemployment Insurance Code as long as he or she
29 meets the requirements of that section.

30 (e) A person who receives compensation in connection with the
31 operation of the raffle shall be an employee of the eligible
32 organization that is conducting the raffle, and in no event may
33 compensation be paid from revenues required to be dedicated to
34 beneficial or charitable purposes.

35 (f) No raffle otherwise permitted under this section may be
36 conducted by means of, or otherwise utilize, any gaming machine
37 that meets the definition of slot machine contained in Section 330a,
38 330b, or 330.1.

39 (g) (1) No raffle otherwise permitted under this section may be
40 conducted, nor may tickets for a raffle be sold, within an operating

1 satellite wagering facility or racetrack inclosure licensed pursuant
2 to the Horse Racing Law (Chapter 4 (commencing with Section
3 19400) of Division 8 of the Business and Professions Code) or
4 within a gambling establishment licensed pursuant to the Gambling
5 Control Act (Chapter 5 (commencing with Section 19800) of
6 Division 8 of the Business and Professions Code).

7 (2) A raffle may not be operated or conducted in any manner
8 over the Internet, nor may raffle tickets be sold, traded, or redeemed
9 over the Internet. For purposes of this paragraph, an eligible
10 organization shall not be deemed to operate or conduct a raffle
11 over the Internet, or sell raffle tickets over the Internet, if the
12 eligible organization advertises its raffle on the Internet or permits
13 others to do so. Information that may be conveyed on an Internet
14 Web site pursuant to this paragraph includes, but is not limited to,
15 all of the following:

16 (A) Lists, descriptions, photographs, or videos of the raffle
17 prizes.

18 (B) Lists of the prize winners.

19 (C) The rules of the raffle.

20 (D) Frequently asked questions and their answers.

21 (E) Raffle entry forms, which may be downloaded from the
22 Internet Web site for manual completion by raffle ticket purchasers,
23 but shall not be submitted to the eligible organization through the
24 Internet.

25 (F) Raffle contact information, including the eligible
26 organization's name, address, telephone number, facsimile number,
27 or email address.

28 (h) No individual, corporation, partnership, or other legal entity
29 shall hold a financial interest in the conduct of a raffle, except the
30 eligible organization that is itself authorized to conduct that raffle,
31 and any private, nonprofit, eligible organizations receiving financial
32 support from that charitable organization pursuant to subdivisions
33 (b) and (d).

34 (i) An eligible organization may conduct no more than one
35 major league sports raffle per home game.

36 (j) An employee may not sell raffle tickets in any seating area
37 designated as a family section.

38 (k) An eligible organization shall disclose to all ticket purchasers
39 the designated private, nonprofit, eligible organization for which
40 the raffle is being conducted.

1 (l) An eligible organization that conducts a raffle to financially
2 support another private, nonprofit eligible—~~organization~~
3 *organization*, as defined in subdivision (c) of Section ~~320.5~~ 320.5,
4 shall distribute all proceeds not paid out to the winners of the prizes
5 to the private, nonprofit organization within 15 days of conducting
6 the raffle, in accordance with this section.

7 (m) Any raffle prize remaining unclaimed by a winner at the
8 end of the season for a team with an affiliated eligible organization
9 that conducted a raffle to financially support another private,
10 nonprofit eligible—~~organization~~ *organization*, as defined in
11 subdivision (c) of Section ~~320.5~~ 320.5, shall be donated within 30
12 days from the end of the season by the eligible organization to the
13 designated private, nonprofit organization for which the raffle was
14 conducted.

15 (n) (1) An eligible organization may not conduct a raffle
16 authorized under this section, unless it registers annually with the
17 Department of Justice. The department shall furnish a registration
18 form via the Internet or upon request to eligible nonprofit
19 organizations. The department shall, by regulation, collect only
20 the information necessary to carry out the provisions of this section
21 on this form. This information shall include, but is not limited to,
22 the following:

23 (A) The name and address of the eligible organization.

24 (B) The federal tax identification number, the corporate number
25 issued by the Secretary of State, the organization number issued
26 by the Franchise Tax Board, or the California charitable trust
27 identification number of the eligible organization.

28 (C) The name and title of a responsible fiduciary of the
29 organization.

30 (2) The department may require an eligible organization to pay
31 an annual registration fee of ten dollars (\$10) to cover the actual
32 costs of the department to administer and enforce this section. The
33 department may, by regulation, adjust the annual registration fee
34 as needed to ensure that revenues will fully offset, but do not
35 exceed, the actual costs incurred by the department pursuant to
36 this section. The fee shall be deposited by the department into the
37 General Fund.

38 (3) The department shall receive moneys for the costs incurred
39 pursuant to this section subject to an appropriation by the
40 Legislature.

1 (4) The department shall adopt regulations necessary to
2 effectuate this section, including emergency regulations, pursuant
3 to the Administrative Procedure Act (Chapter 3.5 (commencing
4 with Section 11340) of Part 1 of Division 3 of Title 2 of the
5 Government Code).

6 (5) The department shall maintain an automated database of all
7 registrants. Each local law enforcement agency shall notify the
8 department of any arrests or investigation that may result in an
9 administrative or criminal action against a registrant. The
10 department may audit the records and other documents of a
11 registrant to ensure compliance with this section.

12 (6) Once registered, an eligible organization must file annually
13 thereafter with the department a report that includes the following:

14 (A) The aggregate ~~net~~ gross receipts from the operation of
15 raffles.

16 (B) The aggregate direct costs incurred by the eligible
17 organization from the operation of raffles.

18 (C) The charitable or beneficial purposes for which proceeds
19 of the raffles were used, or identify the eligible recipient
20 organization to which proceeds were directed, and the amount of
21 those proceeds.

22 (7) The department shall annually furnish to registrants a form
23 to collect this information.

24 (8) The registration and reporting provisions of this section do
25 not apply to any religious corporation sole or other religious
26 corporation or organization that holds property for religious
27 purposes, to a cemetery corporation regulated under Chapter 19
28 (commencing with Section 9600) of Division 3 of the Business
29 and Professions Code, or to any committee as defined in Section
30 82013 of the Government Code that is required to and does file
31 any statement pursuant to the provisions of Article 2 (commencing
32 with Section 84200) of Chapter 4 of Title 9 of the Government
33 Code, or to a charitable corporation organized and operated
34 primarily as a religious organization, educational institution,
35 hospital, or a health care service plan licensed pursuant to Section
36 1349 of the Health and Safety Code.

37 (o) The department may take legal action against a registrant if
38 it determines that the registrant has violated this section or a
39 regulation adopted pursuant to this section, or that the registrant
40 has engaged in any conduct that is not in the best interests of the

1 public's health, safety, or general welfare. An action taken pursuant
2 to this subdivision does not prohibit the commencement of an
3 administrative or criminal action by the Attorney General, a district
4 attorney, city attorney, or county counsel.

5 (p) An action and hearing conducted to deny, revoke, or suspend
6 a registry, or other administrative action taken against a ~~registrant~~
7 *registrant*, shall be conducted pursuant to the Administrative
8 Procedure Act (Chapters 4.5 (commencing with Section 11400)
9 and 5 (commencing with Section 11500) of Part 1 of Division 3
10 of Title 2 of the Government Code). The department may seek
11 recovery of the costs incurred in investigating or prosecuting an
12 action against a registrant or applicant in accordance with those
13 procedures specified in Section 125.3 of the Business and
14 Professions Code. A proceeding conducted under this subdivision
15 is subject to judicial review pursuant to Section 1094.5 of the Code
16 of Civil Procedure.

17 (q) *Prior to March 31, 2017, the Department of Justice shall*
18 *conduct a study and report that study to the Assembly Committee*
19 *on Governmental Organization. The study shall include, but not*
20 *be limited to, all of the following:*

21 (1) *Which organizations conduct raffles each year pursuant to*
22 *this section and Section 320.5.*

23 (2) *The number of raffles conducted per year pursuant to this*
24 *section and Section 320.5.*

25 (3) *The amount raised for charities each year from raffles*
26 *conducted pursuant to this section and Section 320.5.*

27 (4) *How the money raised from raffles conducted pursuant to*
28 *Senate Bill 639 of the 2000–01 Regular Session compares to the*
29 *money raised from raffles conducted pursuant to this section, and*
30 *whether this section has had an impact on the raffles conducted*
31 *pursuant to Senate Bill 639 of the 2000–01 Regular Session.*

32 (5) *Whether and how the money raised from raffles conducted*
33 *pursuant this section has impacted charitable giving by the eligible*
34 *organizations.*

35 (6) *Whether there have been any consumer complaints related*
36 *to raffles conducted pursuant to this section.*

37 (r) *This section shall remain in effect only until December 31,*
38 *2017, and as of that date is repealed, unless a later enacted statute,*
39 *that is enacted before December 31, 2017, deletes or extends that*
40 *date.*

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